



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/272,542	03/19/1999	PETER B. MADOFF	10575/002001	5785

7590 05/30/2002

DENIS G MALONEY  
FISH & RICHARDSON  
225 FRANKLIN STREET  
BOSTON, MA 021102804

EXAMINER

ELISCA, PIERRE E

ART UNIT	PAPER NUMBER
----------	--------------

3621

DATE MAILED: 05/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/272,542

Applicant(s)  
Madoff Peter B. et al.

Examiner  
Pierre E. Elisca

Art Unit  
3621



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 4, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-40, 43-60, AND 62-64 is/are pending in the application.
- 4a) Of the above, claim(s) none is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-40, 43-60, AND 62-64 is/are allowed.
- 6) ☒ Claim(s) 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

Art Unit: 3621

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office action is in response to Applicant's amendment, filed on 03/04/2002.
2. Claims 1-64 are remained.

### ***Allowable Subject Matter***

3. Claims 1-40, and claims 42-64 are allowed over the prior art of record.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 41 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Wagner (U.S. Pat. No. 4,903,2001) in view of Mori et al. (U.S. Pat. No. 6,044,363).

**Regarding to claim 41, Wagner** discloses a method of auctioning a product, said method comprising:

Art Unit: 3621

entering a predefined relative indication that corresponds to a willingness to buy or sell the product with the predefined relative indication specifying a price relative to a current market price (see Fig. 5, item 148, col. 12, lines 45-49). **Applicant's newly added limitation with predefined relative indication remaining undisclosed as to the existence of the trading interest until matched with an order is seen to read as** matching the order with the predefined relative indication in according with a price specified by the order (see Fig. 5, item 144, 148, col. 10, lines 47-52). **Wagner** does not explicitly disclose willingness to sell or to buy but **Mori** discloses below:

said willingness to trade in response to orders if an order for the product arrives for exposure (see abstract, specifically wherein it is stated that a plurality of auction ordering information pieces each containing a desired price, a number of purchase, this step is seen to read as the step willingness to buy or sell based upon a highest bid) and price relative to an indicator of the current prevailing market price.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of **Mori to Wagner** for the benefit of helping buyer with a realistic bidding price.

Furthermore, **Mori** discloses predetermined price condition for bidding (see col. 6, lines 10-34, specifically wherein it is stated that a maximum allowed price in competition for the desired price....).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the price relative to indicator of the current prevailing market price to **Wagner and Mori** for the benefit of satisfying seller's pricing criteria.

### *Response to Arguments*

6. Applicant's arguments filed 03/04/2002 have been fully considered but they are not persuasive.

Art Unit: 3621

### CONCLUSION

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Tuesday to Friday from 6:30AM to 5:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9769.

**Any response to this action should be mailed to:**

Commissioner of Patents of Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051, (for formal communications intended for entry)

Art Unit: 3621

**OR**

(703) 305-9724, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

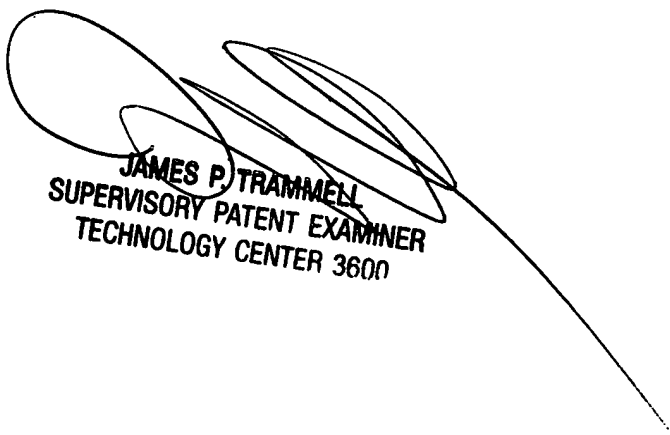
Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., seventh floor (receptionist).

The Official Fax Numbers For TC-3621 Are:

After-final (703) 746-7238

Official (703) 746-7239

Non-Official/Draft (703) 746-7240



JAMES P. TRAMMELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600



Pierre Eddy Elisca

Patent Examiner

May 22, 2002